

Beyond Criminalisation and Responsibilisation: Sexting, Gender and Young People

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Abstract

In recent years, the prosecution of teenagers who use digital and online technology to produce and circulate erotic imagery ('sexts') under child pornography statutes has been the subject of sustained controversy. Debates over sexting have foregrounded the harms of criminalisation as well as the role of sexts in cyber-bullying and online child solicitation. While acknowledging the problematic dimensions of legal interventions in sexting, this article notes that patterns of relational coercion often begin in adolescence and that malicious sexting cases follow patterns similar to other forms of technologically facilitated gendered victimisation. The gendered dimensions of sexting are often overlooked in education campaigns that position girls and young women in ways that responsabilise them to reduce their own risk of victimisation. It is argued that efforts to prevent or intervene in the harms of sexting should consider the broader sociocultural role of digital and online technology in coercive control and dating abuse and also avoid a simplistic responsabilisation of potential victims.

Introduction

'Sexting' is a term widely used to describe emails, text messages and other forms of electronic communication that contain sexual material, such as a suggestive or provocative text, or images of people who are nude, nearly nude or that are sexually explicit (Ringrose et al 2012). Self-produced erotic images and movies circulate widely throughout online and mobile phone networks, but the participation of minors in the self-production and distribution of such material has been the focus of considerable media attention and social concern. Sexting by children and teenagers not only challenges prevailing views about normative sexuality and childhood (Jewkes 2010), but in some jurisdictions can result in

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children being prosecuted under child pornography legislation (Svantesson 2011). Weins and Hiestand (2009) described a variety of responses to sexting, ranging from calls for the decriminalisation of sexting to the hardline position that sexting should be considered a form of child pornography. These laws and the resulting sanctions (which may include placement on sex offender registers) have come under sustained criticism in the popular media and from academics (McClymont 2010; Richards and Calvert 2009; Walker et al 2011). Legal scholars have argued that there should be exceptions in child pornography laws for minors who sext, even where there is a general consensus that teen sexting is undesirable and can be harmful (see, for example, Shafron-Perez 2009; Weins and Hiestand 2009; Arcabascio 2010).

In the course of questioning whether sexting should be prosecuted under child pornography legislation, academic and media commentary has at times failed to distinguish adequately the various forms of behaviour which may be labelled as sexting. Sexting may be seen to cover consensual image taking and sharing, as well as consensual taking and non-consensual sharing of images (and sometimes even non-consensual taking and non-consensual sharing). The effect is that aggravated sexting incidents are often minimised as momentary 'lapses of judgement' or a case of 'raging hormones'. In fact, the circulation of naked images with the intention to humiliate and shame is an increasingly common technique among domestic violence offenders seeking to threaten, control or punish partners and ex-partners (Dimond et al 2011; Hand et al 2009; Southworth et al 2007). Domestic violence research has consistently found that early initiation of relationship coercion is an important indicator of future violence or abuse (Manchikanti Gómez 2011). Hence a malicious sexting incident may signal a host of other issues beyond 'adolescent immaturity', including the willingness of boys or young men to use technology and other means to abuse, stalk and harass girls and women.

This article suggests that debates over the excesses of criminalisation have to an extent overshadowed some of the more subtle but nonetheless important questions about gender, abuse and technology raised by sexting. It begins with a general introduction to young people's sexual use of digital and online technology, before going on to examine legal and educational responses to sexting in Australia. It then draws together the literature on the role of technology in gendered violence to argue that adolescent sexting provides a point of early intervention in the potential escalation of relational abuse and coercion.

Young people, technology and sexuality

The social impact of online and digital technologies is particularly evident among teenagers and young people, for whom mobile phones, social media and the internet play a central role in leisure, pedagogy and work practices (Lenhart et al 2010). Australian children's and teenagers' use of online and digital technology has significantly higher rates than many of their counterparts overseas (Green et al 2011). The benefits of this technology for young people include expanded opportunities for communication and community involvement and increased exposure to a variety of views and opinions (O'Keeffe et al 2011). This has proven particularly important in vexed areas such as teenage sexuality, with online forums and social networking sites providing a relatively safe space for young people to explore questions about sexual practice and identity (Brown et al 2009). Friendships and relationships, including sexual relationships, are increasingly initiated through and mediated by these technologies. However, teenagers' sexualised use of technology has caused considerable consternation in recent years: see, for example, Cooper (2012), where the *The Daily Telegraph* (Sydney) reports that sexting among teenagers has become an 'epidemic'. In particular, the role of digital technologies, such as mobile phones with

camera capabilities, in enabling the self-manufacture and distribution of naked or erotic sexts by teenagers has been the subject of sustained media attention and public concern.

Anxieties about teenage sexuality, child pornography and the pitfalls of technology have coalesced around the sexting phenomenon (Jewkes 2010), which has been linked in Australia and overseas to cyber-bullying, school harassment and, in some cases, teenage suicide (Ryan 2010; Walker et al 2011). A related concern is that 'youth may be jeopardizing futures by putting compromising, ineradicable images online that could be available to potential employers, academic institutions, and family members' (Mitchell et al 2012:14). Submissions to the Joint Select Committee on Cyber-Safety Inquiry (2011:141) raised concerns that teenagers' sexts may find their way into child pornography collections, and included anecdotal reports that teenage girls are bargaining sexts in exchange for cigarettes and drugs. The sensationalism that has characterised the public debate on sexting has been inflamed by the provocative findings of unrepresentative online surveys of teenagers, which have found high rates of sexting among young people, although the methodology and generalisability of these studies has been questioned (Lounsbury et al 2011). For example, a non-representative 2008 survey of 653 teenagers (aged 13–19) found that one in five respondents have sent electronically or posted online nude/semi-nude pictures or videos, including 11 per cent of teenage girls (13–16) (TRU 2008). In Australia, a non-representative survey of over 33 000 Australian young people under the age of 18 carried out by the Joint Select Committee on Cyber-Safety (2011) found that 8.8 per cent of responders would send or have sent a 'nude image', including 20 per cent of 18-year-old respondents who stated they had done so.

The recent publication of statistics regarding representative samples of young people suggests that these figures are somewhat exaggerated. A random stratified sample of 400 Australian young people aged 11–15 who use the internet found that 15 per cent reported having seen or received a 'sexual message' (including image or text) online and four per cent reported that they had posted or sent such a message (Green et al 2011). One in five children who reported having seen or received a 'sexual message' reported being upset by it. It should be noted that this survey was not representative of Australian teenagers as a whole, but rather of teenagers who use the internet; hence these findings, while generalisable to teenagers with internet access, do not reflect the prevalence of sexting among all teenagers. The overall prevalence of sexting among teenagers was investigated by the Third Youth Internet Safety Survey, a representative survey of 1500 teenagers in the United States, which found that approximately 10 per cent of respondents reported 'appearing in or creating nude or nearly nude images or receiving such images in the past year'; however, most respondents reported that they had only received images and had not appeared in or created them (Mitchell et al 2012:16). Only a small number (39) of respondents reported appearing in or creating images; of those that who did, one in five reported feeling very or extremely upset as a result.

Contrary to popular belief, only a small minority of teenagers make and/or distribute sexting images, and the majority of these young people do not report significant distress or harm. The upset of some children victimised within sexting incidents is an important issue that will be discussed shortly; however, sexting represents a very small proportion of all incidents of child victimisation (Berkman Center for Internet and Society 2008). The moral opprobrium that has greeted revelations of teenage sexting is further confounded by evidence that adults are much more enthusiastic sexters than minors (TRU 2008), casting doubt on claims that the popularity of sexting among teenagers is a function of their psychological or neurological immaturity (see, for example, Arcabascio 2010). This highlights the double standard evident in moral panics about teenage sexting that excludes

young people from the forms of sexual citizenship and representation exercised by adults (Albury et al 2010). Lumby and Albury (2010) have drawn attention to the gendered dimensions of these moral panics and, in particular, to the ways in which they construct an image of the 'prematurely' sexualised and commodified girl. It is girls, rather than boys, who are positioned as 'at risk' in the debate over sexting, as moral entrepreneurs present an image of girls and young women without an interest in, or capacity for, sexual expression (Ringrose et al 2012). Conversely, more optimistic accounts of teenage sexuality can present an equally simplistic account of teenage girls as 'agentic, knowledgeable, savvy navigators ... of a contemporary "toxic" sexual culture' (Renold and Ringrose 2011:391–2).

These debates reproduce a simplistic victimisation/empowerment dualism that does not account for the participation of teenage girls in the self-production of media such as sexts and ignores the complexity of young people's engagement with new technology in a cultural environment characterised by significant gender disparities (Ringrose et al 2012). A survey of more than 33 000 Australian young people under the age of 18 consistently found that girls reported feeling less safe online than boys in virtually all age categories (Joint Select Committee on Cyber-Safety 2011:124). Further, girls are significantly more likely than boys to report being upset or distressed by the sexts they view or receive (Green et al 2011) and, as will be discussed, the criminal cases concerning sexting that have emerged in Australia and overseas have primarily involved boys maliciously circulating images of girls with the intention of causing them distress, or the solicitation of sexts from girls by adult men (Wolak et al: 2012). Renold and Ringrose (2011:402) call for an approach to sexting that considers girls' feelings of pleasure and power in the context of 'their experiences of virtual and embodied networks colonized with real and symbolic (hetero)sexualised violence in their everyday lives'. The qualitative research of Ringrose and colleagues (2012) on the social and relational contexts of sexting in Britain emphasised that sexting is closely linked to the sexual harassment and relational coercion that is common in teenage peer groups. The researchers also highlight the linkages between sexting and other gendered social issues in which sexual negotiation, consent and pleasure is vitiated by significant inequalities.

From a criminological perspective, sexting practices among young people are not generally as 'deviant' from relatively common adult behaviours as is commonly portrayed. Indeed, the practice reproduces what Matza and Sykes (1961) describe as 'subterranean values' in adult culture. The coercion that some girls and young women (and boys and young men in some cases) experience to send sexualised images of themselves to others, as well as the differential impacts of such behaviours on girls and women, can be understood as extensions of broader gendered social relations (Ringrose et al 2012). This being the case, legislators and policy makers are misinterpreting motivations for offences and missing key opportunities for public education. The twin processes of criminalisation and responsabilisation, both of which either censure or shame the individual, overlook sexting as part of a broader pattern of gendered sexual negotiations.

In the two sections that follow, we further assess these twin processes of criminalisation and responsabilisation. First, we explain the current Australian laws that deal with sexting between young people. Second, we examine a key education campaign aimed at reducing the practice of sexting between young people. Such assessments highlight the need to discriminate between different motivations in sexting behaviours. We then explore further 'aggravated' or malicious sexting and its impacts.

The legal response to sexting in Australia

There are a range of laws spanning civil and criminal law which are and which can be applied to sexting behaviours. In criminal law, aside from child pornography laws, offences such as inciting an act of indecency (see, for example, *DPP v Eades*) or publishing an indecent article may cover sexting cases. Civil laws, such as defamation, privacy and breach of confidence may also apply to such behaviours (for a review of applicable laws, see Svantesson 2011). The focus of this article is, however, the most severe reaction of the criminal law, which has caused much media commentary: child pornography laws. These laws were designed to protect young people from exploitation by adults and, within Australia, until recently there has been little investigation into whether or not current criminal laws are adequate and appropriate to deal with sexting between young people. The only government which has made a commitment to examine the nature of sexting and the applicable laws is Victoria's, which commissioned the Victorian Law Reform Committee to investigate these issues in 2011, and the inquiry is ongoing at the time of writing.

All Australian states and territories have laws prohibiting the creation, possession and transmission of child pornography. However, given that sexting usually involves the use of mobile phones or the internet to store and pass on images, Commonwealth criminal law applies. 'Child pornography material' is defined in s 473.1 of the *Criminal Code 1995* (Cth) ('*Criminal Code*') as material that depicts or describes a person who is, or who appears to be, under 18 years old either engaged in a sexual pose or sexual activity or being present or apparently present while another person engages in a sexual pose or sexual activity. Further, the definition includes material where the dominant characteristic of that material is the depiction, description or representation, for a sexual purpose, of the sexual organ or anal region of a person or breasts of a female who is, or who appears to be, under 18. In all these instances, the depiction or description must meet a threshold test of whether 'reasonable persons' would regard it as being, in all the circumstances, offensive. This is designed to ensure that community standards are incorporated into the determination of whether the material amounts to child pornography (Krone 2005:2).

The age level under which a child is thought to be a child for the purposes of child pornography is two years higher than the age at which a child may consent to sexual activity. The Commonwealth Attorney-General's Department notes that it is appropriate that the age threshold for child pornography should 'be higher than the age of consent because child pornography involves the exploitation (often for commercial purposes) of children' (Australian Government 2008:6).

In terms of offences, as the Commonwealth only has jurisdiction in certain criminal matters, the *Criminal Code* does not contain a broad range of offences concerning child pornography. Rather, the offences are linked to the mode by which the child pornography is accessed, transmitted or made available. Thus, it is an offence to use a 'carriage service' (that is, telephone, mobile telephone, internet etc: *Telecommunications Act 1997* (Cth) s 7) to access, transmit, make available or solicit child pornography (*Criminal Code* s 474.19). The *Criminal Code* also prohibits the preparatory offences of possessing or producing such material with the intent to place it on the internet or distribute it through a mobile network (s 474.20). Furthermore, in line with the Commonwealth's jurisdiction over external affairs, possessing, controlling, producing, distributing or obtaining child pornography outside Australia is prohibited by the *Criminal Code* (s 273.5). Such behaviours within Australia or where there is no intention to place such material on the internet or distribute it by mobile phone are matters for the criminal law of the states and territories.

The child pornography offences contained in the *Criminal Code* are designed to act as a model for the states and territories (Slipper 2004:32 035–6). However, there still exists a degree of difference in the definition of ‘child pornography’ throughout Australia, with some jurisdictions adopting a definition closely following the Commonwealth, while others retain a narrower definition. New South Wales, for example, closely follows the Commonwealth definition by defining ‘child abuse material’ as material that depicts or describes a child, or a person appearing to be a child, engaging in a sexual act or sexual pose, or witnessing a sexual act or sexual pose, or a depiction or description of the private parts of a child, or a person who appears to be a child (*Crimes Act 1900* (NSW) s 91FB(1)). The private parts include the genital or anal area or a person or breasts of a female (s 91FB(4)). Importantly, for the purposes of determining whether such material amounts to child pornography, the material must also be such that reasonable persons would regard it as being, in all the circumstances, offensive. In making such a determination the standards to be applied are ‘the standards of morality, decency and propriety generally accepted by reasonable adults’ (s 91FB(2)(a)). There should also be a consideration of the merit of the material from a literary, artistic, educational, and journalistic standpoint, as well as the general character of the material.

The definition of ‘child exploitation material’/‘child pornography’/‘child abuse material’ in Queensland, the Northern Territory, Tasmania and Western Australia is relatively similar, although none of these jurisdictions makes reference to depictions or descriptions of private parts (but the Western Australian *Criminal Code Act Compilation Act 1913* (WA) s 217A does refer to ‘a person, or part of a person’). The remaining jurisdictions do not make reference to the standards of reasonable persons; rather, in South Australia and the Australian Capital Territory, the material depicting or describing a child engaged in sexual activity or a body part of the child must be such that it is for the purposes of sexual arousal or sexual gratification of someone other than the child (*Crimes Act 1900* (ACT) s 64(5); *Criminal Law Consolidation Act 1935* (SA) s 62). By contrast, in Victoria, the material must show a child, or an apparent child, in an indecent sexual manner or context or engaging in sexual activity (*Crimes Act 1958* (Vic) s 67A).

Aside from such definitional differences, and perhaps even more strikingly, the age at which a person is classified as a child for the purposes of child pornography laws differs throughout Australia, with some jurisdictions setting the age at 16 and others at 17 or 18. This is not always in line with the age of consent and, as a result, it may be illegal for some young people to record sexual activity that may lawfully take place in ‘real time’.

Only a few Australian jurisdictions prevent children being prosecuted under these laws. An amendment made to the Commonwealth *Criminal Code* in 2010 requires that the permission of the Attorney-General is required before a child can be prosecuted under child pornography laws. Broader protection is found in Victoria, where it is a defence to a charge of possessing child pornography that the accused who made or was given material by a minor was not more than two years older than the minor was or appeared to be (*Crimes Act 1958* (Vic) s 70(2)(d)). Further, a defence applies to prevent a minor who appears in the material deemed to be pornographic from being charged with possessing child pornography (s 70(2)(e)).

Aside from these jurisdiction-limited protections, the main form of legal protection or concession for children is the general provision of criminal law that children aged between 10 and 14 are presumed incapable of guilt (presumption of *doli incapax*, found on a legislative footing in some jurisdictions and a matter of common law in others). (A child less than 10 years of age can never be prosecuted in any Australian jurisdiction.) According

to the presumption of *doli incapax*, children 10–14 years old cannot be convicted of an offence unless it is proved that the child understood the wrongfulness of the behaviour according to the standards of ordinary people (*R v M*). However, from the age of 14 there is no special assessment of the child's understanding or level of development and a child is assumed to be as criminally responsible as an adult. Thus the offences in this area are applicable to young people and, aside from the exceptions noted, no allowance is made in law for the possibility that young people may have a different perception or understanding of such behaviours. Indeed, senior magistrates have complained that these laws are inappropriately applied to young people:

These people shouldn't be regarded as sex offenders. It's going beyond the pale in relation to the imposition of long-term penalties which are not judicial penalties, they're not fines or community-based orders or even sex offender treatment programs. This is a limitation on what a person can and can't do for the next eight years of their life, for God's sake (Brady 2011).

Criminal prosecutions

The first attempt to prosecute sexting in Australia involved Damien Eades who, when he was 18 and working in a fast-food outlet in western Sydney, struck up a friendship with a 13-year-old girl. In 2008, following a sexually charged text message exchange, the girl sent Eades a naked picture of herself. The police were notified after the girl's father, checking her phone, found the photo, along with text messages in which Eades encouraged the girl to send him 'hot steamy' photos. As a result, Eades was charged with inciting a person under 16 to commit an act of indecency towards him under s 61N(1) of the *Crimes Act 1900* (NSW) and with the possession of child pornography under former s 91H(3) of that Act. Both charges were dismissed by a magistrate on the grounds that the naked photo did not qualify as 'indecent' and the sexual dimensions to the exchange between Eades and the girl could not be taken into account by the Court. It was also found that the image did not amount to child pornography because there was 'no posing, no objects, no additional aspects of the photograph which are sexual in nature or suggestion' (*DPP v Eades* at [13]). However, at the time of trial, the definition of 'child pornography' in New South Wales was narrower. The definition is no longer restricted to depictions or descriptions of sexual behaviour or sexual poses, but now extends to description or depiction of the private parts of a child: *Crimes Act 1900* (NSW) s 91FB(1). When the Director of Public Prosecutions appealed over the 'act of indecency' charge, the Supreme Court found that the magistrate had erred and should have considered the sexual nature of Eades' intent and the content of the text messages, as well as the age difference between Eades and the girl (*DPP v Eades* at [58]). The matter was referred to the Local Court to be heard again (McClymont 2010). In Ryde Local Court, Magistrate Daniel Ross found the offence of inciting an act of indecency to be proven, but a conviction was not recorded and Eades was given a good behaviour bond (Danks 2010).

In other cases, teenagers who were already known to the police were charged with offences after incriminating sexts were found when police checked their mobile phones while investigating other matters (Australian 2008; McKean 2010). These cases raise the possibility that the legal ambiguities surrounding sexting behaviours can be used by the police in order to further threaten and intimidate young people who are already in trouble with the law. Evidence from the United States suggests that, there, police are in the main only seeking prosecution where there are aggravating factors present, such as malicious or reckless distribution of images, rather than consensual circulation (Wolak et al 2012). Nonetheless, this research also reports that in around 18 per cent of incidents police sought prosecution even where there was no malicious or reckless circulation and no other offences

were involved (Wolak et al 2012:9). In Australia, media reports suggest that young people are increasing falling foul of child pornography laws. For example, in 2011, *The Sunday Mail* claimed that '[i]n the past three years, more than 450 child pornography charges have been laid against youths between the ages of 10 and 17' (Tin 2011). The reliability of such reports is, however, questionable, especially given that in Australia there is little reliable literature on sexting (Walker et al 2011) and, in particular, in relation to the police and prosecutorial practice. However, it is clear that in most jurisdictions legally there is little to stop prosecution of children for sexting, whether this is done with or without consent, and much relies on the discretion of the police and prosecution agencies. While there are harmful dimensions to the practice of sexting, its criminalisation under child pornography legislation is also a source of harm to young people. The challenge facing government authorities, schools and parents is to develop an evidence-based and proportionate response to sexting that encourages a responsible rapprochement between new technology and young people's sexualities.

Education and minimising the harms of sexting

An educational approach to online safety has been an important recommendation from a recent public inquiry into sexting in Australia (Joint Select Committee on Cyber-Safety 2011). Campaigns have been mounted in Australia, the United Kingdom, the United States and elsewhere which aim to educate young people about the potential negative impacts of sending sexually explicit material. These campaigns are generally focused on raising awareness of the legal consequences that could flow from this behaviour, as well as the humiliation that attends the unauthorised circulation of images. Disquiet over the harms of sexting (its criminalisation, as well as its association with cyber-bullying and child solicitation) has resulted in the development of a number of educational initiatives aimed at teenagers and their parents. In Australia, the Australian Federal Police is trialling a national pilot of the online safety program *Think U Know* (www.thinkuknow.org.au), which was created by the Child Exploitation and Online Protection Centre ('CEOP'), a specialist British law enforcement agency. *Think U Know* provides information on online safety, tailored to children as well as concerned parents and teachers, using fact sheets and online videos. The website explains different forms of electronically mediated communication, and emphasises the benefits of these technologies and platforms for children and young people, as well as potential risks and pitfalls. Young people are provided with strategies to 'stay in control' and manage risk when using online and digital technology. It also provides advice about reporting on and intervening in victimisation when it occurs to others, with a strong focus on bystander culpability through forwarding on sext material. School staff can also book a free presentation about online safety for their primary or high-school students.

Much of the Australian *Think U Know* promotional and education material is built around 'Megan's Story', a two-minute video following the story of high-school student 'Megan'. In the video, Megan is first shown emerging from the school bathroom buttoning up her top and sending a picture message to 'Ryan'. She then enters a classroom and exchanges a knowing smile with a male student looking at his phone, who is by implication Ryan, the recipient of Megan's sext. When Megan sits down at her desk, she begins receiving comments, meaningful looks and notes suggesting that other students have seen her sext. Megan becomes increasingly anxious as this behaviour escalates, until finally the teacher's phone beeps, indicating the receipt of a picture message that he views, and then he looks disapprovingly at Megan. This is followed by a screen shot advertising the *Think U Know* website, and a voiceover that says: 'Think you know what will happen to your images, who will see them, how they will affect you? Think again.'

A video with a male protagonist has yet to be made for Australian audiences, although the *Think U Know* Australia website includes links to videos made in Britain by the CEOP. One such video tells the story of 14-year-old 'Matt', who believed he had struck up an online relationship with a teenage girl, only to discover, after arranging a meeting in a secluded area, that he had been deceived by an adult male paedophile. This man appears first as a looming shadow in a dark coat before lunging at Matt with his hands around his throat, and blackmailing him into sexual activity with the sext material Matt had sent to his 'girlfriend'. This scene then begins to 'rewind' to a time prior to the meeting between Matt and the offender, and shows Matt using the *Think U Know* website to notify the authorities of the suspicious activities of his online 'girlfriend'. The offender is then arrested by the police. The closing scene of the video shows Matt seated at his computer, reading with satisfaction an online article about a man being convicted for 'online grooming', as his voiceover assures the audience that 'you don't have to let it get out of control'.

Matt was tricked into exchanging sexting material, but Megan did so voluntarily, and this shifts the focus of moral opprobrium in Matt's case from the sext to the deception of the 'paedophile'. The primary message of the video with Matt is that people online are not always who they claim, and therefore 'experimental' exchanges of picture or video material may have unknown consequences. The primary aim of the video is to encourage victims to report paedophiles to the police. This is a very different message from what is delivered in Megan's video, which is that girls should 'think again' about producing sexual images of themselves. In that video, Ryan's decision to send Megan's image to his friends takes place off-screen and is only ever implied, so that the viewer's attention is not drawn away from Megan's response to her public humiliation. Both videos depict scenarios that become emotionally charged due to male wrongdoing: Ryan forwarding Megan's sext, and the paedophile manipulating Matt. However, Matt is portrayed as entirely innocent (if somewhat naive), whereas the contortions of Megan's face as she shifts through the emotional registers of initial sexual allure to fear, anxiety and shame mark her as foolish and implicated in her own moral downfall.

It could be argued that the ways in which Megan is depicted as sexually provocative and therefore implicated in her own victimisation, and Matt is not, reflect a gendered double standard that is often applied to victims of sexual violence, including children. It is commonly observed that women's clothing and behaviour is frequently at issue in rape trials (Young 1998), but it is less well known that sexually abused girls have been accused in court of dressing inappropriately, flirting or otherwise inviting their own victimisation (despite consent not being at issue, since the victim is a minor) (Eastwood and Patton 2002). Matt's attacker is represented as significantly more dangerous and violent than Ryan, who is portrayed as a leering but goofy teenager. The policing of child sexual abuse is replete with distinctions between offenders that characterise men who abuse boys as predatory 'paedophiles', while men who abuse girls are viewed as less serious 'opportunistic' or 'situational' offenders (Miller 1997; for a critique, see Cossins 1999). In a similar vein, Matt's abuse represents an unexpected break from normative (hetero)sexuality for which he is not held accountable, whereas Megan's victimisation occurs within the 'everyday' sphere of gendered interaction in which 'flirting' can be reworked into a hidden indicator of consent for activities to which a girl (or woman) does not agree.

The role of technology in gendered coercion and violence

Debates over the appropriateness of sexting prosecutions and the sanctions imposed can at times trivialise or misinterpret the harms of this behaviour. Importantly, such debates appear to overlook the sometimes malicious motivations behind some incidences of sexting.

Acknowledging the range of sexting behaviours, and the different motivations and impacts of such behaviours, is an important starting point for the development of a more proportionate and appropriate response. Based on their review of 550 sexting cases obtained from a national survey of United States police agencies in 2008 and 2009, Sacco and colleagues (2010) draw a useful distinction between ‘aggravated’ and ‘experimental’ incidents of youth-produced sexual images. Whereas the term ‘experimental’ denotes relatively harmless incidents of sexting exchange between consenting minors, ‘aggravated’ incidents include criminal or abusive dimensions, such as adult solicitation, extortion or threats, and circulating images without consent. The Third Internet Safety Survey found that aggravating factors were present in approximately one-third of incidents in which teenagers reported appearing in or creating a sext (Mitchell et al 2012). Adults were involved in a minority of these incidents, indicating that there is some overlap between sexting and what may be child sexual abuse.

While the possibility that sexting may expose a child to abuse and exploitation has attracted considerable attention, it is less well recognised that prior experiences of child sexual abuse may heighten a child’s vulnerability to sexual harassment and abuse when using digital or online technology. The Second Internet Safety Survey found an association between prior sexual abuse and riskier sexualised use of technology (such as discussing sexual matters in a chat room or sending private information to strangers online) such that physical and sexual abuse victims are more likely to receive unwanted or harassing requests online for sexual pictures (Mitchell et al 2007). This suggests that sexting can be part of an accumulation of traumatic or victimising experiences in the lives of some minors, particularly girls with histories of prior abuse (Mitchell et al 2007). The report of the Joint Select Committee on Cyber-Safety (2011) recognised that family and social problems and/or mental health problems can contribute to the vulnerability of young people online, particularly among those who lack the skills to identify and respond self-protectively to inappropriate behaviour.

Teenagers’ motivations for engaging in technologically facilitated exchanges of ‘experimental’ nude or nearly nude images are often to maintain an ongoing romantic relationship or to establish a new romantic or sexual contact (TRU 2008; Lenhart 2009; Mitchell et al 2012). However, there are significant gender disparities within these exchanges. In the TRU (2008) survey, half of the teenage girls reported that pressure from boys is a reason why girls send suggestive messages or pictures, but only one-fifth of boys reported such pressure from female partners. While one-quarter of teenage girls and boys said that they were pressured by friends to send/post sexual content, 12 per cent of teenage girls felt pressured by their partners to do so. A focus group study with teenagers that discussed sexting with mobile phones also highlighted the relational contexts and gendered dynamics of sexting, and the ways in which sexts are exchanged between current or potential romantic partners (Lenhart 2009). Boys and girls in the study reported the circulation of sext images by boys to other boys, either to ‘show off’ their girlfriend or as revenge in the advent of a fight or break-up. Girls also discussed explicit or implicit pressure from boyfriends or potential boyfriends to send sexts in order to maintain their interest. This does not mean that all ‘pressure’ equates with abuse or control. Peer pressure is a fact of life for young people. However, on the strength of these surveys, there is likely to be a significant minority of cases where abusive or controlling behaviours are present, and not just in cases that might be regarded as ‘aggravated’ (Sacco et al 2010).

Ringrose and colleagues (2012) argue that sexting is inextricably linked to the normalised physical and verbal harassment experienced by teenage girls, which in turn mirrors inequalities in broader gender relations. It follows then that the circumstances in which

sexting arises can in some cases be shaped by a continuum of coercion that includes cyber-stalking, coercive control and intimate partner violence. Women in domestic violence shelters have described the ways in which social media, the internet and other information and communication technologies have been used by violent partners to stalk, control and abuse them, where requests for sexual pictures were interspersed with threats and insults (Dimond et al 2011). Importantly, adult victims of sexualised technological coercion have rarely found redress through the courts. In Australia, only a few men have faced legal sanction after maliciously circulating sexual images or videos of ex-partners. In a Victorian civil case the Supreme Court awarded damages to a woman after her violent ex-partner repeatedly attempted to show a video of their sexual activity to friends and relatives (*Giller v Procopets*). Recently, in New South Wales, a 20-year-old man was sentenced to six months jail for the offence of publishing an indecent article under s 578C of the *Crimes Act 1900* (NSW) after he uploaded naked images of his ex-girlfriend to Facebook (*Police v Ravshan Usmanov*). However, the rarity of such prosecutions was highlighted when the Court could only find one prior decision that addressed similar issues, which was a New Zealand case from 2010.

Among men as well as boys, perceived injuries to masculine pride in the aftermath of a relationship breakdown, or generalised aggression towards girls and women, can be expressed through the non-consensual circulation of compromising digital imagery of girls and women. The opprobrium that has greeted sexting among minors has served as a medium through which similar impulses and behaviour among adults has been disavowed and projected onto 'deviant' teenagers. The fact that the burden of sexting-related harms falls disproportionately on girls and women due to the deliberate perpetration of abuse by boys and men has been all but lost in legal processes that mislabel and inappropriately punish many cases of sexting. Indeed, criminalising sexting under child pornography laws operates to obscure the patterned nature of such behaviour, although it appears that in Australia police, prosecution agencies and the courts have shown more constraint than in the United States in applying child pornography legislation to sexting cases. While all parties to a sexting incident can be considered legally culpable under child pornography legislation, including the minor who self-produces and sends an image of himself or herself to someone else, it is primarily the 'receivers' of sexts who have been the subject of criminal charges, particularly where they circulate the image to others. This speaks perhaps to an implicit acknowledgement of the gendered relations within which sexts are produced and circulated.

Nonetheless, the current raft of prevention and education programs also fails to situate sexting within its social and cultural context. The subject of these campaigns is the inadequately self-regulated, unsupervised and/or overly sexed individual, usually female. As the Australian Psychological Society (cited in Australian Government 2009:13) noted, "technology" is often blamed for behaviour rooted in wider social problems, and in the range of issues characterising adolescence'. Only when we recognise that sexting behaviours are varied and complex, and a component of broader social patterning and subterranean values, can we begin to meet the challenge of preventing aggravated sexting behaviours among minors and adults alike. Ferrell et al (2008) note that, with the development of each new form of mediated communication technology, there develops the need for a new language and a new set of cultural norms and values. This being the case, sexting may require the development of new 'sexual ethics' (Carmody 2009) appropriate to these emerging technologies and the cultures that accompany them.

Conclusion

Public debate over sexting has brought to the fore a range of emotionally charged issues pertaining to teenage sexuality and the increasing integration of technology into social life. This has been further complicated by ambiguities within child pornography legislation, which has snared minors and young people who self-produce, distribute or receive sexts. These debates have centred on the harms of criminalisation, as well as the harms associated with sexting, which range from public humiliation to cyber-bullying and online child solicitation. However, the role of online and digital technology in relationship coercion has been largely absent from these debates.

In misinterpreting the offence and offenders' motives in sexting cases, the existing criminal law is implicit in obscuring the reproduction of gender inequities that have a broader social aetiology. Educational material aimed at raising young people's awareness of sexting harms has maintained a strong focus on gender and relationships, but the material arguably positions girls as the main agents in prevention in a similar way to which women have been held responsible for protecting themselves from sexual assault. The possibility that 'Megan's' goofy boyfriend 'Ryan' may grow up to become an offender of comparable seriousness to the man portrayed attacking 'Matt' is worth considering in light of the evidence that highlights that relational abuse and violence often begins in adolescence. Online and digital technologies provide new modes through which such abuse may be initiated; however, they also provide important new means for education, prevention and intervention.

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